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'Let's teach these darkies about the rule of law'

Courtenay Griffiths, lead counsel for ex-Liberian president Charles Taylor, tells *spiked* about the racial bias in international criminal justice.

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We're midway through a debate on the future of the International Criminal Court (ICC), and Courtenay Griffiths QC is almost bristling. An audience member at the London conference has questioned whether Griffiths' criticism of the international criminal-justice system is tantamount to defending impunity. 'My critique is based on my love and respect for the law', counters Griffiths, 'and my disgust at the way in which international criminal justice is currently being practised'.

'Africa has suffered enough', he continues, 'from the atrocities committed by its own people – and I'm old enough to remember Emperor Bokassa. So yes, there is a need for an end to impunity. But in my mind, the push against impunity has to come from African people themselves, from the bottom up. The idea that the white man comes to Africa as he did during the nineteenth century – bearing the White Man's Burden – to bring the benefits of international justice to black people… I reject that totally. It's for black people to do it for themselves in Africa. That's the start [of an end to impunity].'

Griffiths is well placed to deliver such a criticism. For the past five years he has been working at the heart of the international criminal-justice system in his role as the lead defence counsel for Charles Taylor, the ex-president of Liberia. It's fair to say that the recent and long-awaited decision of the Special Court of Sierra Leone (an offshoot of the ICC) to find Taylor guilty of helping the Revolutionary United Front commit war crimes in Sierra Leone between 1991 and 2002 was not seen by Griffiths as a

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vindication of international justice. Rather, it was further proof of its double standards.

'So Taylor was convicted of aiding and abetting combatant forces in a neighbouring country knowing that they were committing atrocities', Griffiths tells the audience. 'Help me here. What was the US doing with the Contras in Nicaragua? What did Kissinger do with the Indonesians in East Timor? I am not arguing here that because of that Taylor should not have stood trial. But when I went to university to study law I was told that whether you're a princess or prostitute, whether you're the president of the United States or the president of Liberia, the law should be above you.'

After the debate, I sit down with Griffiths to interview him. And it quickly becomes clear how thoroughgoing is his critique of the ICC. 'There's a new scramble for Africa going on at this point in the twentieth-century', he tells me. 'And I think the West is seeking to use the tool of international criminal law to facilitate its penetration into that market. It seems somewhat coincidental that in virtually every situation where the

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ICC has intervened, a major economic interest is at stake. Darfur – there just happened to be oil. In northern Uganda and the great lakes region – they've discovered oil there. In Libya, [ex-British prime minister Tony] Blair made some major deals for oil there before Gaddafi was killed. Congo – one of the most minerally rich countries on the planet, a place where certain rare minerals used in mobile phones and laptops can only be found. Why only in those places? Why not in Zimbabwe? The West has long trumpeted what an ogre [President Robert] Mugabe is. So why not Zimbabwe?'

There is a whiff of conspiracy theory about this sort of quasi-economic determinism. After all, there must be easier ways for Western nations and interests to go about obtaining access to, and control over, Africa-based resources than interminable war-crimes trials. But Griffiths' understanding is far subtler than this. To reverse the anti-war slogan of the Iraq War era, in his view it is not *all* about the oil. He also recognises that international criminal law is being used as a means for the West to show and justify its authority, to furnish its existence with the appearance of moral purpose. It is not mere coincidence that the roots of the ICC are found in that strange moment of triumphalism and disorientation after the end of the Cold War. The ICC's forerunner, the International Criminal Tribunal for the Former Yugoslavia (ICTY) established in 1993, met an extant need for Western states, a need for a justifying purpose, for a political *raison d'être* to replace the dead Red menace.

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'I think you have to look at the historical juncture in which that tribunal was set up', Griffiths explains. 'It was shortly after the fall of the Berlin

Wall and a resurgent West, led by neocons in Britain and the US, were beginning to flex their muscles on the global stage. I recall a speech Blair made in Chicago [*Doctrine of the International Community*, 1999], in which he effectively said that there can be no boundaries to capitalism now. Nobody has the luxury of hiding behind their national borders, he was saying. And it seems to me that Yugoslavia was the first situation the West had, after the fall of the Berlin Wall, to flex their muscles on an international level. That then became the template, to my mind, for what has happened since.'

When it comes to the ICC proper, however, there is the added dimension of what Griffiths calls the 'historical relationship between the West and Africa'. In effect, the West's 'persistent idea of Africa being the Dark Continent, uncivilised' provides the perfect stage for Western nations, through the ICC, to demonstrate their moral superiority. International criminal justice as it stands, Griffiths explains, 'is in part… a civilising mission by the West. "Let's teach these darkies about the rule of law." I

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find this quite offensive, as if Africans don't understand what this rule of law is all about unless told and taught by the West.'

The colonial underpinnings of international criminal justice are hardly hidden. In its 10-year history, the ICC itself has only opened investigations into seven countries: the Democratic Republic of Congo, Uganda, the Central African Republic, Darfur/Sudan, Kenya, Libya and the Ivory Coast. All, of course, in Africa. Little wonder that international justice has long suffered from accusations of bias. As then British foreign secretary Robin Cook said of the ICTY in 2000, 'If I may say so, this is not a court set up to bring to book prime ministers of the United Kingdom or presidents of the United States.'

And yet, despite the fact that its focus is almost entirely on 'the Dark Continent', few in the West are willing to face up to the fundamental inequality of international law. All of which is a little puzzling. Those who get themselves into a froth over the 'unwitting' racial connotations of words, and who wear human rights as a badge of honour, are willing to stick by an institution that routinely singles out black people for selective punishment. Yes, its advocates are defensive, noting that the application of international justice has been far from universal. But, as leading human-rights lawyer Geoffrey Robertson said last year, when the ICC announced its indictment of Colonel Gaddafi, 'the ICC is a good thing and a necessary institution to have and to develop'.

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I ask Griffiths why he thinks this liberal hypocrisy persists. 'I think that's because, however deceitful an idea is, it will always catch on if there is truth at one level in it', he answers. 'And the truth is that Africa has

suffered more wars and more destruction than most other continents over the last 50 years. So there is a need for an end to impunity in Africa. But it's the way the West is going about it in a selective fashion. A selectivity of denunciation, a selectivity of investigation, a selectivity of prosecution, and even within Africa, a selectivity of indictment. Everyone knows, for example, that [Rwandan president Paul] Kagame and [Ugandan president Yoweri] Musaveni have got their hands covered in blood in eastern Congo. But the West is never going to go after them because they're Western allies.'

There are limits to this critique of international law, however bracing and insightful it is. It assumes that the main problem is simply that international law is too partial, too selective. But would everything be okay if international law was genuinely universal? Would everything be hunky-dory if there really did exist arbiters sitting high above human affairs capable of administering justice impartially and without selectivity? In short, would it be okay if Bush and Blair were tried at the ICC, too?

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The problem with this thinking is that it is excessively legalistic. It assumes that the law is the answer to all problems, all conflicts, all struggles, no matter how bitter, how entrenched. Yet many struggles and conflicts, both within and between nations, exist precisely because law, and the possibility of a legal settlement, has broken down. They are complex, messy, political struggles. They are post-law, not pre-law. They are not conflicts simply awaiting the distinctly white knights of international justice to show them the way. Griffiths says he agrees. 'Court isn't necessarily, even though I'm a lawyer, the best way to deal with some of these conflicts', he tells me. 'They have social, economic and political roots, which the use of the law is never going to address.'

It seems clear that we shouldn't just be facing up to the limits of the ICC. We need to recognise that the whole project of international criminal justice is flawed. Griffiths' critique of these institutions is a very good starting point for asking how lawyers came to be the moral arbiters of international affairs – especially the affairs of 'darkies'.

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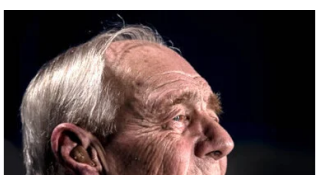

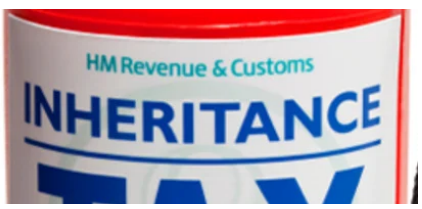

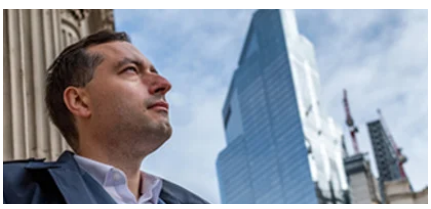

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